

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**February 11, 2013**

**Elisabeth A. Shumaker  
Clerk of Court**

ROADBUILDERS MACHINERY &  
SUPPLY CO., INC.,

Plaintiff - Appellant,

v.

SENNEBOGEN, LLC,

Defendant - Appellee.

No. 12-3290  
(D.C. No. 2:11-CV-02681-KHV-DJW)

**ORDER**

Before **BRISCOE**, Chief Judge, **LUCERO**, and **HOLMES**, Circuit Judges.

The plaintiff Roadbuilders Machinery & Supply Company, Inc., appeals the district court's order compelling arbitration and staying the district court proceedings. This court entered an order to show cause, challenging appellate jurisdiction. Having carefully considered the plaintiff's and the defendant's arguments in response to the jurisdictional challenge, we conclude that this court lacks jurisdiction to consider the plaintiff's appeal.

The district court entered an order granting the defendant's motion to compel arbitration and staying the district court proceedings. The order directed the parties to file status reports every 90 days. No final judgment has been entered. The plaintiff

appealed the arbitration order. The plaintiff moved the district court to reconsider its arbitration order or in the alternative to certify its order for immediate appeal pursuant to 28 U.S.C. § 1292(b). The district court declined to do either.

The Federal Arbitration Act itemizes what types of arbitration orders may be immediately appealed, 9 U.S.C. § 16(a), and not appealed, *id.* § 16(b). The order at issue in this case falls squarely into the category of orders that may not be appealed immediately:

Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order –

(1) granting a stay of any action under section 3 of this title. . .

*Id.* § 16(b). Further, this court has long held that “an order staying a district court proceeding pending arbitration is not a final order within Section 1291.” *Quinn v. CGR*, 828 F.2d 1463, 1465 (10th Cir. 1987). The plaintiff sought an exception to the final judgment rule by requesting a certification for immediate appeal from the district court under 28 U.S.C. § 1292(b). The district court denied the request, however. None of the plaintiff’s other arguments regarding appellate jurisdiction are persuasive. *See Quinn*, 828 F.2d at 1466-67.

Because this court lacks jurisdiction to review the order being appealed, we dismiss the appeal. The plaintiff will have an opportunity to appeal after seeking the district court’s review of the arbitrator’s award and final judgment is entered. *See* 9 U.S.C. § 10, 28 U.S.C. § 1291; *see also Comanche Indian Tribe of Oklahoma v. 49*,

*L.L.C.*, 391 F.3d 1129, 1133 (10th Cir. 2004) (citing *Pioneer Properties, Inc. v. Martin*, 776 F.2d 888, 891 (10th Cir. 1985)).

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script that reads "Lara Smith".

by: Lara Smith  
Counsel to the Clerk